

FCC MAIL SECTION

Before the  
Federal Communications Commission  
Washington, D.C. 20554

JUL 13 1 59 AM '05

In re Applications of )  
) MB Docket No. 04-144  
**PISCATAWAY BOARD OF EDUCATION** )  
)  
For Renewal of License ) Facility ID No. 52686  
For Noncommercial Educational ) File No. BRED-19980427WA  
Station WVPH(FM), Piscataway, New Jersey )  
)  
and )  
)  
**KING'S TEMPLE MINISTRIES, INC.** )  
)  
For a Construction Permit ) Facility ID No. 91347  
For a New Noncommercial Educational ) File No. BPED-19980805MB  
FM Station, Plainfield, New Jersey )

**ORDER****Adopted: July 13, 2005****Released: July 13, 2005**

By the Chief, Audio Division, Media Bureau:

1. The Commission, by the Chief, Audio Division, acting pursuant to delegated authority, has before it the Petition for Reconsideration filed May 6, 2004, by Piscataway Board of Education ("PBE") regarding the *Hearing Designation Order* released April 9, 2004 (the "*HDO*").<sup>1</sup> For the reasons set forth below, we dismiss the Petition under Section 1.106(a)(1) of our rules.<sup>2</sup> However, as also explained below, on our own motion we modify the *HDO* to vacate our conditional grants of the above-captioned applications, return both applications to pending status, expand the issue designated for hearing, and order certain action by the presiding Administrative Law Judge.<sup>3</sup>

<sup>1</sup> *Piscataway Board of Education*, 19 FCC Rcd 6291 (MB 2004). The presiding Administrative Law Judge issued an Order on his own motion, staying the hearing pending action on PBE's Petition. *Order*, MB Docket No. 04-144 (FCC 04M-18) (rel. May 13, 2004). On May 19, 2004, King's Temple Ministries, Inc. ("KTM") filed an Opposition to Petition for Reconsideration ("Opposition"). KTM indicated in its Opposition that it has changed its name to King's Temple Ministries World Outreach Church, Inc. For clarity, we continue to use the name King's Temple Ministries, Inc. herein. PBE filed a Reply to Opposition to Petition for Reconsideration on May 24, 2004.

<sup>2</sup> 47 C.F.R. § 1.106(a)(1).

<sup>3</sup> See, e.g., *Richard Bott II*, 8 FCC Rcd 7303 (1993) (dismissing petition for reconsideration and modifying initial designation order). See also *infra* note 11.

## BACKGROUND

2. PBE timely filed the above-captioned renewal of license application for noncommercial educational ("NCE") FM station WVPH(FM) on Channel 212 in Piscataway, New Jersey. KTM timely filed the above-captioned application for authority to construct a new NCE FM station on Channel 212 in Plainfield, New Jersey, on a time sharing basis with WVPH(FM). KTM stated that PBE had not operated WVPVH(FM) at least 12 hours per day each day of the year during the renewal period, and thus asserted that it should be permitted to share time with PBE pursuant to Section 73.561(b) of our rules.<sup>4</sup> PBE failed to contest KTM's proposal until after the *HDO* was released, and neither PBE nor KTM submitted any other information to the Commission while their respective applications remained pending.

3. In the *HDO*, the staff construed Section 73.561(b) to require, under the circumstances presented in this case, that the current licensee "share use of the frequency upon grant of an appropriate application proposing [a] share time arrangement."<sup>5</sup> Noting that the parties had attempted without success to reach an agreement on a schedule of times to be used by each, the staff further concluded that, "if no qualifications issues arise regarding the renewal or new station applicant(s), the rules require the Commission to set the matter for expedited hearing on the issue of sharing time."<sup>6</sup> The staff examined the applications and found no qualifications issues regarding either party. Further, the staff found "that conditional grant of both Piscataway Board's renewal application and King's Temple's application for a new NCE FM station . . . will serve the public interest, convenience, and necessity."<sup>7</sup> Pursuant to Section 73.561(b)(2) as construed by the staff, the matter was designated "for an expedited hearing limited solely to the issue of sharing time."<sup>8</sup>

4. In its Petition, PBE asserts that KTM's competing application must be dismissed under Section 73.3573 of our rules<sup>9</sup> because KTM's ownership allegedly changed significantly during the pendency of that application. Moreover, PBE argues that insofar as KTM failed to notify the Commission of such ownership changes, KTM violated Section 1.65 of the rules.<sup>10</sup> In addition, notwithstanding the fact that WVPH(FM)'s license term under review ended on June 1, 1998, PBE proffers that the station has operated on a full-time schedule since May 1999 and that its license should therefore be renewed without the imposition of an involuntary time sharing arrangement. Citing Commission decisions,<sup>11</sup> PBE also argues that Section 73.561(b) does not require PBE to share time with

<sup>4</sup> See 47 C.F.R. § 73.561(b).

<sup>5</sup> *HDO*, 19 FCC Rcd at 6292 (citing 47 C.F.R. § 73.561(b)).

<sup>6</sup> *Id.* (citing 47 C.F.R. §§ 73.561(b)(1) and (2)).

<sup>7</sup> *Id.* (citing 47 C.F.R. § 73.561(b)(2)).

<sup>8</sup> *Id.*

<sup>9</sup> 47 C.F.R. § 73.3573.

<sup>10</sup> 47 C.F.R. § 1.65.

<sup>11</sup> PBE cites to *Seattle Public Schools*, 60 R.R.2d 1073 (1986) ("*SPS II*") (modifying on reconsideration issues specified in the initial hearing designation order), and *Seattle Public Schools*, 4 FCC Rcd 625 (Rev. Bd. 1989) (continued....)

KTM under any circumstances. Rather, PBE asserts, the rule requires that the Commission designate for hearing the issue of whether a time sharing arrangement would best serve the public interest. Finally, PBE contends that because the staff failed to send an inquiry letter prior to issuing the HDO, PBE was deprived of due process.

### DISCUSSION

5. Under Section 1.106(a)(1), the Commission will entertain a petition for reconsideration of a hearing designation order only as to an adverse ruling with respect to petitioner's participation in the proceeding.<sup>12</sup> PBE, of course, has not been excluded from participation in the proceeding here. Its Petition does not even address the procedural restrictions of Section 1.106(a)(1) or attempt to justify interlocutory review, nor do we find any reason to depart from the rule in this case. The Petition is therefore dismissed as unauthorized.

6. We do, however, take this opportunity to consider on our own motion whether we should modify the issue designated for hearing in light of the Commission's Seattle Public Schools ("SPS") decisions.<sup>13</sup> The Commission had before it the school system's renewal application and a competing application of Jack Straw Memorial Foundation ("Straw"). The facts presented there differed somewhat from those in this case. For example, the school system had operated the station full time during a significant portion of the renewal period and had reduced operations for only seven months. Nonetheless, we conclude that our actions in the HDO for the instant proceeding are inconsistent with the Commission's pronouncements in the SPS decisions regarding Section 73.561(b).

7. In the SPS initial designation order, the Commission stated that Section 73.561(b) does not "mandate" time sharing where the parties have been unable to agree on operating hours.<sup>14</sup> The Commission construed the rule to mean that the school system was "not exempt from the *possibility* of forced time sharing under Section 73.561(b)" and designated the applications for hearing on the time sharing issue.<sup>15</sup> On reconsideration, Straw maintained that "Section 73.561(b) is a *per se* rule requiring an inefficient station to share time if an appropriate application is filed, and that the share time issue should have been limited to determining the amount of time to be allocated to each party under a time sharing arrangement."<sup>16</sup> The Commission rejected that argument.<sup>17</sup> When it subsequently adopted (with certain modifications) the ALJ's Initial Decision, affirming grant of the school system's renewal application without imposition of a time sharing arrangement, the Commission described Straw's "rehash

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(affirming the ALJ's ultimate grant of the School System's renewal application) ("*SPS Final Decision*"). See Petition at 10-12.

<sup>12</sup> 47 C.F.R. § 1.106(a)(1). See, e.g., *Trinity Broadcasting of Florida, Inc.*, 9 FCC Rcd 2567 (1994).

<sup>13</sup> Cf. *Pillar of Fire*, 2 FCC Rcd 519 (1987) (denying Application for Review but finding applicant raised important matter warranting further discussion and clarification).

<sup>14</sup> *Seattle Public Schools*, 103 F.C.C.2d 862, 865 (1986).

<sup>15</sup> *Id.* (emphasis added).

<sup>16</sup> *SPS II*, 60 R.R.2d at 1074.

<sup>17</sup> *Id.* at 1075-76.

of its prior assertion that Section 73.561(b) is mandatory rather than permissive" as a contention "flatly rejected by the Commission . . . ." <sup>18</sup>

8. In light of the Commission's construction of Section 73.561(b), we now conclude that the *HDO* should include the issue of whether granting PBE's and KTM's applications would serve the public interest, convenience, and necessity. Accordingly, we vacate the grants of both applications and return them to pending status. We also expand the issue previously specified, as set forth below.

### CONCLUSION

9. IT IS ORDERED, That pursuant to 47 C.F.R. Section 1.106(a)(1), the Petition for Reconsideration filed by Piscataway Board of Education on May 6, 2004, IS DISMISSED.

10. IT IS FURTHER ORDERED, That the conditional grant of Piscataway Board of Education's application for renewal of license of WVPH(FM), Piscataway, New Jersey, File No. BRED-19980427WA, and the conditional grant of the mutually exclusive application of King's Temple Ministries, Inc. for authority to construct a new NCE FM station on Channel 212 in Plainfield, New Jersey, File No. BPED-19980805MB, on a time sharing basis with WVPH(FM), as ordered in Paragraph 4 of the *Hearing Designation Order*, ARE VACATED, and the applications are RETURNED TO PENDING STATUS.

11. IT IS FURTHER ORDERED, That Paragraph 6 of the *Hearing Designation Order* IS MODIFIED to read as follows:

"6. IT IS FURTHER ORDERED, That pursuant to 47 U.S.C. Section 309(e), the application of Piscataway Board of Education for renewal of license of WVPH(FM), Piscataway, New Jersey, File No. BRED-19980427WA, and the mutually exclusive application of King's Temple Ministries, Inc. for authority to construct a new NCE FM station on Channel 212 in Plainfield, New Jersey, File No. BPED-19980805MB, on a time sharing basis with WVPH(FM), ARE DESIGNATED FOR HEARING IN A CONSOLIDATED PROCEEDING, at a time and place to be specified in a subsequent Order, upon the following issue:

To determine whether a time sharing arrangement between Piscataway Board of Education and King's Temple Ministries, Inc. would result in more effective use of the specified channel than would operation restricted to Piscataway Board of Education and thus better serve the public interest, and, if so, the terms and conditions of a time sharing arrangement, including the hours of the day throughout the year during which each licensee is to operate, and to set forth such terms and conditions in a written document. Such arrangement shall not include simultaneous operation of the stations." <sup>19</sup>

<sup>18</sup> *SPS Final Decision*, 4 FCC Rcd at 645.

<sup>19</sup> As indicated in the *HDO*, our action in specifying the time sharing issue is not intended to preclude the parties, either before commencement of the hearing or during the hearing, from negotiating a settlement on their own.

12. IT IS FURTHER ORDERED, That in the event the applicants are otherwise qualified, the presiding Administrative Law Judge shall take the following action:

- a. If it is determined, pursuant to the issue specified above, that a time sharing arrangement between Piscataway Board of Education and King's Temple Ministries, Inc. would result in more effective use of the specified channel than would operation restricted to Piscataway Board of Education, grant the applications of both Piscataway Board of Education and King's Temple Ministries, Inc. to the extent consistent with the terms and conditions of the arrangement determined pursuant to that issue; or
- b. If it is determined pursuant to the issue specified above that operation restricted to Piscataway Board of Education would result in more effective use of the specified channel than would a time sharing arrangement between Piscataway Board of Education and King's Temple Ministries, Inc., grant the application of Piscataway Board of Education and deny the application of King's Temple Ministries, Inc.

13. IT IS FURTHER ORDERED, That pursuant to 47 C.F.R. Section 1.221(b), the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND copies of this Order, by certified mail, return receipt requested, to the parties through counsel, as listed below:

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14. IT IS FURTHER ORDERED, That the Secretary of the Commission, pursuant to 47 C.F.R. Section 1.221(b), SHALL HAVE this Order or a summary thereof PUBLISHED in the Federal Register.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle  
Chief, Audio Division  
Media Bureau